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ABSTRACT

Based on the concept of "buyer's rights," this message details the following Presidential recommendations concerning consumer protection: 1) An Office of Consumer Affairs in the Executive Office of the President, with new legislative standing, an expanded budget, and greater responsibilities; 2) A Division of Consumer Protection in the Department of Justice, to act as a consumer advocate before Federal regulatory agencies in judicial proceedings and in government councils; 3) A new consumer protection law; 4) Expanded powers for a revitalized Federal Trade Commission; 5) A newly activated National Commission on Consumer Finance to investigate and report on the state of consumer credit; 6) Expanded consumer education activities, including government review of product-testing processes, a "Consumer Bulletin," and the release of certain government information regarding consumer products; 7) Stronger efforts in food and drug safety, including a thorough re-examination of the Food and Drug Administration and a review of the products on the "generally regarded as safe" list; and 8) Other reforms, including an expansion of consumer activities in the Office of Economic Opportunity and efforts to encourage strengthening of state and local programs. (Author/JLB)

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PROTECTION OF INTERESTS OF CONSUMERS

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

RECOMMENDATIONS CONCERNING THE PROTECTION OF THE INTERESTS OF CONSUMERS

OCTOBER 30, 1969.—Referred to the Committee of the Whole House on the State of the Union and ordered to be printed

To the Congress of the United States:

Consumerism—Upton Sinclair and Rachel Carson would be glad to know—is a healthy development that is here to stay.

That does not mean that *caveat emptor*—"let the buyer beware"—has been replaced by an equally harsh *caveat venditor*—"let the seller beware". Nor does it mean that government should guide or dominate individual purchasing decisions.

Consumerism in the America of the 70's means that we have adopted the concept of "buyer's rights."

I believe that the buyer in America today has the right to make an intelligent choice among products and services.

The buyer has the right to accurate information on which to make his free choice.

The buyer has the right to expect that his health and safety is taken into account by those who seek his patronage.

The buyer has the right to register his dissatisfaction, and have his complaint heard and weighed, when his interests are badly served.

This "Buyer's Bill of Rights" will help provide greater personal freedom for individuals as well as better business for everyone engaged in trade.

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The program I am outlining today represents the most significant set of Presidential recommendations concerning consumer interests in our history. Specifically, I propose:

—A new Office of Consumer Affairs in the Executive Office of the President with new legislative standing, an expanded budget, and greater responsibilities. This will give every American consumer a permanent voice in the White House.

—A new Division of Consumer Protection in the Department of Justice, to act as a consumer advocate before Federal regulatory agencies in judicial proceedings and in government councils.

—A new consumer protection law which would be enforced by the Department of Justice and United States Attorneys across the land. Such a law would also better enable consumers either as individuals or as a class to go into court to obtain redress for the damages they suffer.

—Expanded powers for a revitalized Federal Trade Commission, to enable it to protect consumers promptly and effectively.

—A newly activated National Commission on Consumer Finance to investigate and report on the state of consumer credit.

—Expanded consumer education activities, including government review of product-testing processes, a new *Consumer Bulletin*, and the release of certain government information regarding consumer products.

—Stronger efforts in the field of food and drug safety, including a thorough re-examination of the Food and Drug Administration and a review of the products on the "generally regarded as safe" list.

—Other reforms, including an expansion of consumer activities in the Office of Economic Opportunity and greater efforts to encourage the strengthening of state and local programs.

To their credit, producers and sellers have generally become far more responsible with the passing years, but even the limited abuses which occur now have greater impact. Products themselves are more complicated; there is more about them that can go wrong and less about them that can be readily understood by laymen. Mass production and mass distribution systems mean that a small error can have a wide effect; the carelessness of one producer can bring harm or disappointment to many. Moreover, the responsibility for a particular problem is far more difficult to trace than was once the case, and even when responsibility for an error can be assigned, it is often difficult to lodge an effective complaint against it.

All too often, the real advantages of mass production are accompanied by customer alienation; many an average buyer is intimidated by seemingly monolithic organizations, and frequently comes to feel alone and helpless in what he regards as a cruelly impersonal marketplace. In addition, many of the government's efforts to help the consumer are still geared to the problems of past decades; when it is able to act at all, government too often acts too slowly.

Fortunately, most businessmen in recent years have recognized that the confidence of the public over a long period of time is an important ingredient for their own success and have themselves made important

voluntary progress in consumer protection. At the same time, buyers are making their voices heard more often, as individuals and through consumer organizations. These trends are to be encouraged and our governmental programs must emphasize their value. Government consumer programs, in fact, are a complement to these voluntary efforts. They are designed to help honest and conscientious businessmen by discouraging their dishonest or careless competitors.

NEW OFFICE OF CONSUMER AFFAIRS

One of the central roles in present government efforts in the consumer rights field is performed by the President's Special Assistant for Consumer Affairs and those who work with her. This position has been created by Presidential order rather than by statute, however, and it is neither as visible nor as effective as it should be. It is important that both the prestige and the responsibility of this office be strengthened.

I am therefore asking the Congress to establish within the Executive Office of the President a new Office of Consumer Affairs to play a leading role in the crusade for consumer justice. This Office and its director would have central responsibility for coordinating all Federal activities in the consumer protection field, helping to establish priorities, to resolve conflicts, to initiate research, and to recommend improvements in a wide range of Government programs. The Office would advise the President on consumer matters and would alert other government officials to the potential impact of their decisions on the consumers' interests. It would receive complaints from individual consumers and refer them to appropriate agencies or to the businesses concerned.

The new Office of Consumer Affairs would not work solely within the Executive Branch of the Government, however; it would continue to carry out other assignments which the Special Assistant to the President for Consumer Affairs now performs. For example, when called upon, it would assist in the legislative process, testifying at Congressional hearings, and consulting with individual Congressmen. It would aid schools and media in educating the public in consumer skills. The new Office will continue the constructive interchange of information which the Special Assistant has established with businesses and industries, and carry forward its assistance to state and local consumer protection programs.

As I will explain in greater detail later in this message, I am also asking the Special Assistant for Consumer Affairs to undertake specific surveillance responsibilities in the area of product safety, to review the government's policy concerning the release of its own information on consumer products, and to publish a new *Consumer Bulletin* on a regular basis. When the new Office of Consumer Affairs is established, it would take over these and related duties.

A new Office of Consumer Affairs would be a focal point for a wide variety of government efforts to aid people who buy. I urge the Congress to grant it the legislative standing and the added resources necessary to do this work effectively.

A DIVISION OF CONSUMER PROTECTION AND A NEW CONSUMER PROTECTION LAW

A second important structural reform which I am recommending is the establishment by statute of a new Consumer Protection Division in the Department of Justice. This Division would be headed by an Assistant Attorney General and would be staffed by lawyers and economists. It would be adequately financed and given appropriate investigative power so that it could effectively ascertain consumer needs and advance consumer causes. The head of the new Division would act, in effect, as the consumers' lawyer representing the consumer interest before Federal agencies, in judicial proceedings and in government councils.

I also propose that Congress arm this new Consumer Protection Division with a new law—one which would prohibit a broad, but clearly defined, range of frauds and deceptions. The legislation I will propose will be of sufficient scope to provide substantial protection to consumers and of sufficient specificity to give the necessary advance notice to businessmen of the activities to be considered illegal.

The role of the new Assistant Attorney General for Consumer Protection would be similar to that of the Assistant Attorney General who heads the Antitrust Division in the Department of Justice. Just as the Antitrust Division enforces the antitrust laws and intervenes in various governmental proceedings to preserve competition, so the Consumer Protection Division would enforce consumer rights and intervene in agency proceedings to protect the consumer. In enforcing these rights, the Assistant Attorney General for Consumer Protection would also have the assistance of United States Attorneys throughout the country. Their power to take quick and effective action under the new statute would be particularly important for protecting low-income families who are frequently victimized by fraudulent and deceptive practices.

Effective representation of the consumer does not require the creation of a new Federal department or independent agency, but it does require that an appropriate arm of the Government be given the tools to do an effective job. In the past a lone Justice Department lawyer—the Consumer Counsel—has attempted to carry out a portion of this task. Our proposal asks that the new Division of Consumer Protection be adequately staffed and independently funded, as is the Antitrust Division, so that it can vigorously represent the interests of the consumer and enforce the newly proposed legislation.

The new Assistant Attorney General and his Division would, of course, work closely with the Office of Consumer Affairs, the Federal Trade Commission, and state and local law enforcement agencies.

CONSUMERS IN THE FEDERAL COURTS—INDIVIDUAL AND CLASS SUITS

Present Federal law gives private citizens no standing to sue for fraudulent or deceptive practices and State laws are often not adequate to their problems. Even if private citizens could sue, the damage suffered by any one consumer would not ordinarily be great enough to warrant costly, individual litigation. One would probably not go through a lengthy court proceeding, for example, merely to recover the cost of a household appliance.

To correct this situation, I will recommend legislation to give private citizens the right to bring action in a Federal court to recover damages, upon the successful termination of a government suit under the new consumer protection law.

This measure will, for the first time, give consumers access to the federal courts for violation of a federal law concerning fraudulent and deceptive practices, without regard to the amount in controversy. Under Federal court rules, consumers would have the right to sue as a class and not only as individuals. In other words, a group of people could come into court together if they could show that the act in question affected all of them. This is a significant consideration, for it would allow a number of citizens to divide among themselves the high costs of bringing a law suit. Although each person's individual damage might be small, the cumulative effect of a class complaint could be significant and in some circumstances could provide a significant deterrent to expensive fraud or deception. At the same time, the fact that private action must follow in the wake of a successful government action will prevent harassment of legitimate businessmen by unlimited nuisance lawsuits.

THE FEDERAL TRADE COMMISSION

The problems of the American consumer first became a central matter of Federal concern in the late years of the nineteenth century and the early years of the twentieth. One of the important elements in the Government's response at that time was the establishment in 1914 of the Federal Trade Commission, an independent body which was designed to play a leading role in the fight against unfair and deceptive trade practices. While new legislation has given the FTC additional and more specific duties, there has been increasing public concern over the Commission's ability to meet all of its many responsibilities. I believe the time has now come for the reactivation and revitalization of the FTC.

The chairman-designate of the FTC has assured me that he intends to initiate a new era of vigorous action as soon as he is confirmed by the Senate and takes office. A report prepared at my request by a commission of the American Bar Association should help considerably in this effort, for it prevents a valuable description of the problems which face the FTC and the ways in which they can be remedied. I urge the FTC to give serious consideration to these recommendations I have also asked the Bureau of the Budget to help with the revitalization process by supervising an even more detailed management study of this commission.

I am particularly hopeful that a number of specific improvements in the FTC can be quickly accomplished. For example, the Commission should immediately begin to process its business more rapidly so that it can reduce its unacceptably large backlog of cases. I also believe that it should seek out new information on consumer problems through more energetic field investigations, rather than waiting for complaints to come in through its mailrooms or from other government agencies. This initiative could begin with pilot field projects in a limited number of cities, as the ABA task force has suggested. Whatever the strategy, I would hope that it could be accomplished through a more efficient use

of existing personnel and finances; if that proves impossible, added funds should later be appropriated for this purpose.

Administrative reforms will provide only part of the answer, however. I believe the Commission should also consider the extent to which Section 5 of the Federal Trade Commission Act, broadly interpreted, may be used more effectively to cope with contemporary consumer problems. This is the section which gives the Commission its legislative mandate to move against unfair or deceptive practices. The language of this section might well provide an appropriate instrument for policing more effectively some of the more prevalent abuses described by the ABA task force study.

Even if the Commission does apply Section 5 more broadly, however, there remains a question about its jurisdiction which the Congress should promptly resolve. Past FTC enforcement activities have been inhibited by a Supreme Court decision of some twenty-five years ago, holding that activities "affecting" interstate commerce were not subject to FTC jurisdiction since the language of the law was limited to activities "in" interstate commerce. This means that there is a doubt at present concerning the FTC's ability to consider many unfair and deceptive practices which have a nationwide impact but are local in terms of their actual operation.

I am therefore recommending that the Congress amend Section 5 so as to permit the FTC to take action concerning consumer abuses which "affect" interstate commerce, as well as those which are technically "in" interstate commerce. This amendment would make it clear that the FTC has a jurisdiction consistent with that of several other Federal agencies and commissions. The purpose of the amendment is to clarify FTC jurisdiction over cases which have true national significance; it should not be interpreted in a way which burdens the Commission with a large number of cases which are of only local importance.

One of the most important obstacles to the present effectiveness of the FTC is its inability to seek an injunction against an unfair or deceptive business practice. The result of this inability is an unacceptable delay between the time a harmful practice is discovered and the time it is ended. Often two years will pass between the time the FTC agrees to hear a complaint and the time it issues its final order and another two years may pass while the order is reviewed by the courts.

I recommend that the Congress remedy this situation by giving to the Federal Trade Commission the power to seek and obtain from the Federal courts a preliminary injunction against consumer practices which are unfair or deceptive. The judicial process includes safeguards which will assure that this authority is fairly used. Courts will retain their usual discretion to grant or deny an injunction in the light of all the consequences for both the accused and the plaintiff. Parties will, of course, retain their right to a fair hearing before any injunction is issued.

NATIONAL COMMISSION ON CONSUMER FINANCE

The buying public and businessmen alike have been concerned in recent years about the growth of consumer credit. Twenty-five years ago the total consumer credit outstanding was only 5.7 billion dollars;

today it is 110 billion dollars. The arrangements by which that credit is provided are subject to government supervision and regulations, an assignment which has recently become increasingly complex and difficult. For this reason a National Commission on Consumer Finance was established by law in 1968. It was instructed to review the adequacy and the cost of consumer credit and to consider the effectiveness with which the public is protected against unfair credit practices.

The National Commission on Consumer Finance should begin its important work immediately. I will therefore announce shortly the names of three new members of the Commission, including a new chairman, and I will ask the Congress for a supplemental appropriation to finance the Commission's investigations during the current fiscal year. I look forward to receiving the report of the National Commission on Consumer Finance in January of 1971.

CONSUMER EDUCATION—INFORMATION ON PRODUCT TESTING

No matter how alert and resourceful a purchaser may be, he is relatively helpless unless he has adequate, trustworthy information about the product he is considering and *knows what to make of that information*. The fullest product description is useless if a consumer lacks the understanding or the will to utilize it.

This Administration believes that consumer education programs should be expanded. Our study of existing consumer education efforts in both the public schools and in adult education programs has been funded by the Office of Education and will report its results in the near future.

The Special Assistant to the President for Consumer Affairs is focusing many of the resources of her office on educational projects. One new project which I am asking that office to undertake is the preparation and publication, on a regular basis, of a new *Consumer Bulletin*. This publication will contain a selection of items which are of concern to consumers and which now appear in the daily government journal *The Federal Register*. The material it presents, which will include notices of hearings, proposed and final rules and orders, and other useful information, will be translated from its technical form into language which is readily understandable by the layman.

The government can help citizens do a better job of product evaluation in other ways as well. First, I recommend that Congress authorize the Federal Government to review the standards for evaluation which are used by private testing laboratories and to publish its findings as to their adequacy, working through appropriate scientific agencies such as the National Bureau of Standards. Laboratories presently issue quality endorsements, of one kind or another, for a wide variety of products. Some of these endorsements have meaning but others do not. It would be most helpful, I believe, if the testing procedures on which these endorsements were based were evaluated by government experts. Manufacturers whose products had been tested under government-evaluated testing standards would be allowed to advertise the fact. If no testing standard existed or if the standard in use was found to be inadequate, then the appropriate agency would be authorized to develop a new one.

Secondly, I propose that we help the consumer by sharing with him some of the knowledge which the government has accumulated in the process of purchasing consumer items for its own use. Government agencies, such as the General Services Administration and the Department of Defense, have developed their own extensive procedures for evaluating the products they buy—products which range from light bulbs and detergents to tires and electric drills. As a result of this process, they have developed considerable purchasing expertise; in short, they know what to look for when they are buying a given product. They know, for example, what general types of paint are appropriate for certain surfaces; they know what "check-points" to examine when a piece of machinery is being purchased. The release of such information could help all of our people become more skillful consumers. I am therefore asking my Special Assistant for Consumer Affairs to develop a program for disseminating general information of this sort and to carry on further studies as to how the skill and knowledge of government purchasers can be shared with the public in a fair and useful manner.

FOOD AND DRUGS

The surveillance responsibilities of the Food and Drug Administration extend not only to food and drugs themselves, but also to cosmetics, therapeutic devices, and other products. Both the structure and the procedures of the FDA must be fully adequate to this sizeable and sensitive assignment, which is why this Administration has made the FDA the subject of intensive study.

I have asked the Secretary of Health, Education, and Welfare to undertake a thorough re-examination of the FDA, and I expect that this review will soon produce a number of important reforms in the agency's operations. This study is taking up several central questions: What further financial and personnel resources does the FDA require? Are laboratory findings communicated as promptly and fully as is desirable to high Administration officials and to the public? What should be the relationship of the FDA to other scientific arms of the government? What methods can bring the greatest possible talent to bear on the critical questions the FDA considers?

There are a number of actions relating to FDA concerns which should be taken promptly, even while our study of that institution continues. For example, I have already asked the Secretary of Health, Education, and Welfare to initiate a full review of food additives. This investigation should move as fast as our resources permit, re-examining the safety of substances which are now described by the phrase, "generally recognized as safe" (GRAS). Recent findings concerning the effects of cyclamate sweeteners on rats underscore the importance of continued vigilance in this field. The major suppliers and users of cyclamates have shown a sense of public responsibility during the recent difficulties and I am confident that such cooperation from industry will continue to facilitate this investigation.

I also recommend that the Congress take action which would make possible, for the first time, the rapid identification of drugs and drug containers in a time of personal emergency. When overdosage or accidental ingestion of a drug presently occurs, a physician is often

unable to identify that drug without elaborate laboratory analysis. Many manufacturers are already working to remedy this problem on a voluntary basis by imprinting an identification number on every drug capsule and container they produce. As many in the industry have urged, this simple process should now be required of all drug producers, provided they are given suitable time to adjust their production machinery.

Another important medical safety problem concerns medical edvices—equipment ranging from contact lenses and hearing aids to artificial valves which are implanted in the body. Certain minimum standards should be established for such devices; the government should be given additional authority to require premarketing clearance in certain cases. The scope and nature of any legislation in this area must be carefully considered, and the Department of Health, Education, and Welfare is undertaking a thorough study of medical device regulation. I will receive the results of that study early in 1970.

OTHER PROPOSALS

The Office of Economic Opportunity

The problems which all American consumers encounter are experienced with particular intensity by the poor. With little purchasing experience to rely upon and no money to waste, poorer citizens are the most frequent and most tragic victims of commercial malpractices. The Office of Economic Opportunity is therefore establishing its own Division of Consumer Affairs to help focus and improve its already extensive consumer activities for poorer Americans. The nationwide network of Community Action Agencies can be one instrument for extending consumer education into this area.

Helping the States and Localities

An important segment of consumer abuses can be handled most effectively at the state and local level, we believe, provided that each state has a strong consumer protection statute and an effective mechanism for enforcing it. Several States set examples for the Federal government in this field; every State should be encouraged to explore the need for an adequately financed Division of Consumer Protection as a part of its State Attorney General's office. Both the Special Assistant for Consumer Affairs and the Federal Trade Commission can do much to help States and localities to improve their consumer protection activities. The codification of state consumer protection laws which the Special Assistant is now conducting promises to be a useful part of the States in this effort.

Guarantees and Warranties

Consumers are properly concerned about the adequacy of guarantees and warranties on the goods they buy. On January 8, 1969, a task force recommended that the household appliance industry disclose more fully the terms of the warranties it provides. It recommended that if, at the end of one year, voluntary progress had not occurred, then legislative action should be considered.

In order to evaluate the industry's recent progress, I am today reactivating that task force. It will be chaired by my Special Assistant for Consumer Affairs and will include representatives from the

Department of Commerce, the Department of Labor, the Federal Trade Commission, the Department of Justice, and the Council of Economic Advisors. I am asking the task force to make its report by the end of this year and to comment on the need for guarantee and warranty legislation in the household appliance industries and in other fields.

Product Safety

The product safety area is one which requires further investigation and further legislation, as the hearings of the National Commission on Product Safety have already demonstrated. I am asking my Special Assistant for Consumer Affairs to provide continued surveillance in the area of product safety, particularly after June 30, 1970, when the National Commission on Product Safety is scheduled to complete its work. And I am also instructing the appropriate agencies of the government to consult with the Commission and to prepare appropriate safety legislation for submission to Congress.

Finally, I am asking the Congress to require that any government agency, in any written decision substantially affecting the consumers' interest, give due consideration to that interest and express in its opinion the manner in which that interest was taken into account. I would also note that the major review which will be conducted this December by the White House Conference on Food, Nutrition, and Health will provide further welcome advances in the protection and education of the American consumer.

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Interest in consumer protection has been an important part of American life for many decades. It was in the mid-1920's, in fact, that two of the leading consumer advocates of the day, Stuart Chase and F. J. Schlenk, reached the following conclusion: "The time has gone—possibly forever—," they wrote, "when it is possible for each of us to become informed on all the things we have to buy. Even the most expert today can have knowledge of only a negligible section of the field. What sense then in a specialized industrial society if each individual must learn by trial and error again and forever again?" It was clear at that time and it is clear today, that the consumer needs expert help. The consumer has received some of that needed help through the years, from a variety of sources, private and public.

Our program is a part of that tradition. Its goal is to turn the buyer's Bill of Rights into a reality, to make life in a complex society more fair, more convenient and more productive for all our citizens. Our program is fair to businessmen and good for business, since it encourages everyone who does business to do an even better job of providing quality goods and services. Our action is intended to foster a just marketplace—a marketplace which is fair both to those who sell and those who buy.

RICHARD NIXON.

THE WHITE HOUSE, *October 30, 1969.*